

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants

Case No. 05-CV-00329-GKF-SAJ

**STATE OF OKLAHOMA'S RESPONSE TO PETERSON FARMS, INC.'S
DECEMBER 21, 2007 REQUESTS FOR ADMISSIONS
AND INTERROGATORIES TO PLAINTIFFS [SIC]**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and hereby responds to Peterson Farms, Inc.'s Requests for Admissions and Interrogatories. The State reserves the right to supplement these responses.

GENERAL OBJECTIONS

1. The State objects to these discovery requests to the extent that they seek the admission or denial of matters and discovery of information that is protected by the attorney-client privilege, the work product doctrine, and / or to the extent that they require the State to admit or deny matters which are the subject of review by expert consultants which have not yet been completed or by any other applicable privilege or protection under state or federal law.

2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of Peterson Farms, is obtainable from

another source that is more convenient, less burdensome or less expensive, or is as accessible to Peterson Farms as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for the Defendant Peterson as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of "all" documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" documents or each item of responsive information to such discovery requests.

5. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

6. The State objects to these discovery requests and requests for admission to the extent that they do not state with the required degree of specificity and particularity what information is being sought to be admitted or denied. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning, requiring the State to guess as to what it is admitting or denying, or to admit or deny a statement readily susceptible to alternative interpretations.

7. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.

8. The State objects to these discovery requests to the extent that they improperly

attempt to impose obligations on the State other than those imposed by the Federal Rules of Civil Procedure.

9. The State objects to the instructions set forth in these discovery requests to the extent that they improperly expand or alter the obligations imposed by the Federal Rules of Civil Procedure. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

10. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence.

11. The State objects to the definition of "You," "your" or "yourself" to the extent that it is intended to mean anything other than the State of Oklahoma.

RESPONSE TO REQUESTS FOR ADMISSION

REQUEST NO. 1: Please admit that you do not possess direct evidence that the land application of Poultry Waste from any poultry growing operation under contract with Peterson Farms has caused the Fecal Bacteria contamination of any surface water located within the IRW.

RESPONSE TO REQUEST NO. 1:

The State incorporates its general objections. The State objects to this request for admission to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this request for admission to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State objects to the term "direct evidence" as it is vague, indefinite,

the State has direct evidence that runoff from land upon which Defendant Peterson Farms' Poultry Waste was applied contained Fecal Bacteria. The State also has direct evidence that Fecal Bacteria from Poultry Waste has contaminated groundwater in the IRW. Such direct evidence, along with circumstantial evidence and expert opinion, will show that land application of Defendant Peterson Farms' Poultry Waste has caused Fecal Bacteria contamination of groundwater in the IRW.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1: If You responded to Request for Admission No. 1 with anything other than an unqualified admission, please fully describe your direct evidence, whether documentary or testimonial in nature. To be complete, for each location where you contend Fecal Bacteria contamination from Poultry Waste from any poultry growing operation under contract with Peterson Farms was identified, your answer should include but not necessarily be limited to: (a) identify the specific Source Location; (b) identify the date and location where you contend the Fecal Bacteria contamination was detected; (c) identify the species and concentration of the Fecal Bacteria; (d) identify the date(s) the Poultry Waste was applied to the Source Location; (e) fully describe the basis for your contention that the Fecal Bacteria contamination derived from the Poultry Waste application at the Source location; (f) for documentary evidence, identify each document you contend supports your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms; (g) for testimonial evidence, identify each person who will testify in support of your assertion that the Fecal Bacteria contamination derived from Poultry Waste from a poultry growing operation under contract with Peterson Farms, and state the substance of each such person's expected testimony.

RESPONSE TO INTERROGATORY NO. 1:

The State incorporates its general objections and its response and objections to Request for Admission No. 1, Request for Admission No. 2, and Interrogatory No. 3 as if fully stated herein. The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State and its experts are still collecting and analyzing the information and data which will be used in their opinions and reports. Therefore, the State objects to any production of expert opinions and materials prior to the applicable dates set by the Court's Scheduling Order.

The State objects to the term "direct evidence" as it is vague, indefinite, ambiguous and not susceptible to easily discernable meaning. The State further objects to the term "direct evidence" because it improperly suggests that there exists only one type of relevant, probative evidence. Direct and circumstantial evidence are both admissible under the Federal Rules of Evidence, and one, either or both may be used to establish the liability of Defendant Peterson Farms, Inc. in a case such as this. The State will respond to this question by using the definition of "direct evidence" from Blacks Law Dictionary, 6th Edition, which states in part that "direct evidence" is "... [t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact ..."

The State also objects to this interrogatory on the ground that it improperly seeks identification of all items of responsive information, which renders it overly broad, unduly burdensome and oppressive. It may be impossible to locate all items of information responsive

to this interrogatory. Additionally, the State objects to this interrogatory on the ground that it is improper, overbroad, unduly burdensome and premature. In essence, this interrogatory asks the State to set forth the *entirety* of its evidence supporting its contention. Discovery is still going on, and as such the State is still collecting and analyzing such evidence. Thus, the State is not in a position at this time to “fully describe” all of the evidence requested and it is a premature contention interrogatory. Moreover, even if it were presently in a position to do so, to request that the State in fact do so would be unduly burdensome and harassing. The presentation of the entirety of a party's proof is a matter for trial and is inappropriate for an interrogatory mid-way through the discovery period. As such, in responding to this interrogatory, and subject to and without waiving its objections, the State will be providing merely representative exemplar information. It should be understood by Peterson Farms that this information is merely representative and does not necessarily include every fact and item of evidence upon which the State will rely.

The State further objects to this interrogatory on the grounds that the injury from the Fecal Bacteria contamination is indivisible, and therefore, the State is not required to rely for evidence of its case on the respective contributions of each individual Poultry Integrator Defendant by quantifying such information.

Subject to and without waiver of any objection, the State identifies the following direct evidence, by way of example only, that in combination with circumstantial evidence and expert opinion will show that poultry growing operations under contract with Peterson Farms caused Fecal Bacteria contamination of surface water and groundwater in the IRW:

(a) Representative information regarding the Source Locations includes, without limitation, all poultry growing operations and land in the IRW upon which Poultry Waste from

Defendant Peterson Farms' poultry growing operations has been land applied. Representative information regarding contract growing operations and land application sites identified to date include, but are not limited to, the following: (1) The Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") grower and applicator records (see Index of ODAFF files for Defendant Peterson Farm's contract growers by bates range, attached as Exhibit 1) and the AEMS Databases produced from ODAFF, (2) Peterson Farm's Discovery responses, (3) the Affidavit of Dr. J. Berton Fisher included in the State's Motion for Preliminary Injunction and associated reliance material (including, without limitation, the county tax records, investigative reports and aerial photographs from the State's Scientific Production), and (4) the Affidavit of Dr. Bernard Engel included in the State's Motion for Preliminary Injunction and associated reliance material. As an illustration only, the State identifies the following specific instance of the land application of poultry waste by a Peterson Farms contract grower: The Wayman Rhodes Farm, located at or near N36.20271 W.94.48698 (OK-PL-0012714 and OK-PL-0012715) was observed land applying poultry waste from the Wayman Rhodes Farm on open fields east and west of County Road 298. The Wayman Rhodes farm is 0.2 miles north of the poultry waste application.

(b) Representative information regarding the dates and locations where Fecal Bacteria contamination has been detected in the IRW to date includes, but is not limited to, the following data, reports and databases: (1) The State's Scientific Production, specifically all EML lab data in Index of State's Scientific production Exhibit 2 hereto. (2) United States Geological Survey ("USGS") data, an index of which is attached hereto as Exhibit 3, (3) Oklahoma Water Resources Board ("OWRB") Beneficial Use Monitoring Reports ("BUMP"), produced at the OWRB, and the OWRB Water Quality database produced at the OWRB, and (4) Oklahoma Department of Environmental Quality's ("ODEQ") BACTI database produced at ODEQ. As an

illustration only, the State identifies the following specific instance where Fecal Bacteria has been detected in the IRW: After observing the land application of Poultry Waste by the Wayman Rhodes farm (April 11, 2007) on the fields described above a rainfall event occurred. On April, 24, 2007, a sample of field water runoff (edge of field sample designated as EOF07-230-042407) was collected at N36.20373 W94.48687; and the edge of field sample was analyzed and found to contain Fecal Bacteria.

(c) Representative information regarding the species and concentration of Fecal Bacteria described in subsection (b) above includes, but is not limited to, the following data, reports and databases: (1) The State's Scientific Production, specifically all EML lab data, Exhibit 2 hereto, (2) USGS data, an index of which is attached hereto as Exhibit 3, (3) OWRB BUMP Reports and the OWRB Water Quality database, produced at the OWRB, and (4) ODEQ's BACTI database, produced at the ODEQ. As an illustration only, the State identifies the following species and concentrations of Fecal Bacteria in the IRW: An edge of field sample from the land application on the Wayman Rhodes Farm was analyzed for bacteria and the bacteria detected in this sample included Enterococcus group (>12,000 MPN/100ml), Total Coliform bacteria (>12,000 MPN/100ml), Fecal Coliform bacteria (12,000 MPN/100ml), and E.Coli (12,000 MPN/100ml). See STOK25408-25410.

(d) Representative information regarding the dates upon which Peterson Farms' poultry waste was applied to land includes, but is not limited to, the following; (1) The grower and applicator files of ODAFF (See Index of Peterson Farm's contract growers by bates range, attached as Exhibit 1), (2) the Affidavit of Dr. J. Berton Fisher attached to the State's Motion for Preliminary Injunction and associated reliance material (including, without limitation, the investigative reports and aerial photographs from the State's Scientific Production), (3) the

Affidavit of Dr. Bernard Engel included in the State's Motion for Preliminary Injunction and associated reliance material, and (4) Peterson Farm's Discovery responses. As an illustration only, the State identifies the following specific date of land application of Poultry Waste: The land application of Poultry Waste, from Wayman Rhodes Farms, was observed on April 11, 2007.

(e) The following is representative of information that supports the State's contention that the land application of Peterson Farms' Poultry Waste has caused Fecal Bacteria contamination of surface water and groundwater in the IRW. The State will show that Poultry Waste from poultry growing operations under contract with Peterson Farms is applied to land in the IRW and that Poultry Waste runs off and leaches into surface water and groundwater. The State will show that Poultry Waste contains Fecal Bacteria and that Poultry Waste is contaminating surface water and groundwater through evidence, analysis and expert opinion including, but not limited to, Principal Component Analysis and Polymerase Chain Reaction techniques. Additionally, the State incorporates its response to each of the other subsections of this response and to Interrogatory No. 3 as if fully stated herein.

(f) The State has identified, without limitation, the following representative documents that support the conclusion that Fecal Bacteria from Poultry Waste has caused contamination of surface water and groundwater in IRW:

1. All EML testing data. See Index of State's scientific production, Exhibit 2 hereto.
2. OWRB BUMP data and Water Quality database produced at the OWRB.
3. USGS sampling data. See Index attached hereto as Exhibit 3
4. ODEQ sampling data and BACTI database produced at the ODEQ.
5. Affidavits of Dr. Valerie J. Harwood, and all reliance materials.

6. Affidavit of Dr. Christopher Teaf, and all reliance materials.
7. Affidavit of Dr. Roger Olsen, and all reliance materials.
8. Affidavit of Dr. J. Berton Fisher, and all reliance materials.
9. Affidavit of Dr. Benard Engel, and all reliance materials.
10. All documents referenced in the State's response to Interrogatory No.3.

(g) The State may call the following expert witnesses to testify for the Preliminary Injunction in support of the conclusion that Fecal Bacteria from Peterson Farms' Poultry Waste caused contamination of surface water and groundwater in the IRW:

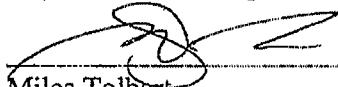
1. Dr. Valerie J. Harwood. See Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.
2. Dr. J. Berton Fisher. See Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.
3. Dr. Roger Olsen. See Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.
4. Dr. Christopher Teaf. See Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.
5. Dr. Bernard Engel. See Affidavit supporting Motion for Preliminary Injunction and reliance materials for the substance of the testimony.

The State will disclose all other expert and fact witnesses for the Preliminary Injunction in accordance with the Court's Scheduling Order. The State will disclose all expert and fact witnesses for the case in chief in accordance with the Court's Scheduling Order.

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

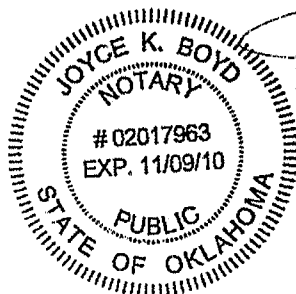
I, Miles Tolbert, being of legal age, state that I do not have personal knowledge of all facts recited in the foregoing answers to interrogatories, nor does any employee of the State of Oklahoma have personal knowledge of all the facts recited in the foregoing answers, but that the information has been gathered by representatives of the State of Oklahoma; that the responses are true and correct to the best of my knowledge and belief based on the information supplied by such representatives of the State of Oklahoma; that I am duly authorized to sign this verification on behalf of the State of Oklahoma; that I have read the answers to the foregoing Interrogatories and that said responses are true and correct to the best of my knowledge and belief, and that I have executed this Verification as my free and voluntary act and deed representing the same.



Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 22nd day of January, 2008

My Commission Expires:
11/09/10
My Commission Number:
02017963





Notary Public

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-00329-TCK-SAJ

**OBJECTIONS AND RESPONSES TO PETERSON FARMS'
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
SERVED MARCH 30, 2007**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and hereby responds to Separate Defendant Peterson Farms, Inc.'s March 30, 2007 Interrogatories and Requests for Production of Documents to Plaintiff.

Preliminary Objections

Although Plaintiff acknowledges that the Federal Rules of Civil Procedure require supplementation of certain discovery answers and responses under specified circumstances, Plaintiff does not concede the validity of applicability of the "Instructions" (set forth on page 3 of Peterson Farms' 2007 discovery requests) with respect to each and every Interrogatory and Request posed or submitted by Peterson Farms. Plaintiff will comply fully its respective discovery obligations as established by the Federal Rules of Civil Procedure, but will not, in the absence of a requirement imposed by the Federal Rules of Civil Procedure or a judicial order,

supplement any answer or response that is not already subject to the mandatory-supplementation provisions of the Federal Rules of Civil Procedure.

In addition, Plaintiff objects to paragraph 2 of Peterson Farms' "Instructions," in that an answer for a particular Interrogatory may be complete, responsive and sufficient even if the answer does not comply with each so-called "requirement" which Peterson Farms has attempted to impose upon Plaintiff in paragraph 2 of its "Instructions."

Finally, Plaintiff objects to, and decline to comply with, the remaining "Instructions" promulgated by Peterson Farms, to the extent that such "Instructions" attempt to impose obligations beyond those specifically established in the Federal Rules of Civil Procedure or in a judicial order.

GENERAL OBJECTIONS

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege, the work product doctrine, and / or any other applicable privilege or protection under state or federal law.

2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of Defendant Peterson Farms, Inc., is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to Defendant Peterson Farms, Inc. as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for the Defendant Peterson Farms, Inc. as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome, and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of "all" documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" documents or each item of responsive information to such discovery requests.

5. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

6. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning.

7. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.

8. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed or authorized by the Federal Rules of Civil Procedure.

9. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

10. The State objects to the definition of "you", "your" and "yourself" as being improper and overly broad. The State of Oklahoma is the plaintiff in this action. Consistent with this fact, the State will construe the terms "you", "your" and "yourself" used in this discovery to mean the State of Oklahoma, and the State of Oklahoma will respond using this

definition and not the definition contained in Defendant Peterson Farms' definitions section.

11. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1: Please fully describe any communications you have had with any current or former employee of or poultry grower who has ever contracted with Peterson Farms that occurred since the Lawsuit was filed, or pertained to any of the claims or defenses asserted in the Lawsuit.

RESPONSE TO INTERROGATORY NO. 1: The State objects to the definition of "you" as being improper and overly broad. The State is the plaintiff in this action. Consistent with this fact, the State will construe the term "you" used in this discovery to mean the State, and the State will respond using this definition and not the definition contained in Peterson Farms' definitions section.

The State also objects to the phrase "any current or former employee of or poultry grower who has ever contracted with Peterson Farms" as being vague, ambiguous, overly broad, and burdensome, and impossible to determine with any accuracy inasmuch Peterson Farms has not provided the State with a list of its current or former employees of Peterson Farms or a list of poultry growers who have ever contracted with Peterson Farms.

The State also objects to this Interrogatory on the ground that it is unlimited in time, and is therefore overly broad and burdensome.

completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

INTERROGATORY NO. 7: For each parcel of land identified in your answers to Interrogatory Nos. 2 and 4, please fully describe your basis for contending that such parcel is or ever has been a source site for any contaminate you allege has impaired or injured any natural resource of the State of Oklahoma in the IRW. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 7: The State incorporates its responses and objections to Interrogatories No. 2, 4 and 5 as if stated fully herein.

INTERROGATORY NO. 8: Please specifically describe each item of physical damage (injury or impairment) to any natural resource of the State of Oklahoma in the IRW, which you contend is being or ever was caused or contributed to by any act or omission of Peterson Farms. Your answer should include, but not be limited to, identifying the specific resource and location, describing the specific damage (injury or impairment), and describing the factual causal connection between such damage (injury or impairment) and the alleged act or omission of Peterson Farms, as well as identifying your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 8: The State objects to this Interrogatory on the ground that it improperly seeks identification of "each" item of responsive information, which renders it overly broad and oppressive. It may be impossible to locate "each" items of responsive information to this Interrogatory. In addition, the State objects to the phrase "is being or ever was" as being vague, ambiguous, overly broad and burdensome, and impossible to determine within the context of this Interrogatory.

The State further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection, or information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Subject to and without waiving its general objections or these specific objections, the State submits as follows:

A. The following natural resources have sustained physical damage, injury or impairment by the acts and omissions of the Defendants, including Peterson Farms:

1. Surface Water -- Surface waters contained within the Oklahoma portion of the Illinois River Watershed, including but not limited to the surface waters of the Illinois River, Flint Creek, Baron Fork, Lee Creek, Peacheater Creek, Tyner Creek, Lake Tenkiller and any and all tributaries to the above.
2. Groundwater -- Groundwater contained within the Oklahoma portion of the Illinois River Watershed.
3. Biota -- Biota, including, but not limited to, birds, mammals, fish, and invertebrates, contained within the Oklahoma portion of the Illinois River Watershed.
4. Sediments/River/Stream/Lake Bottoms -- Sediment/river/stream/lake bottoms contained within the Oklahoma portion of the Illinois River Watershed.

5. Land -- Land impacted by poultry waste within the Oklahoma portion of Illinois River Watershed

(B) The State anticipates that expert reports, to be submitted pursuant this Court's Scheduling Order, will support a claim of injury to the above identified natural resources and which is of a nature and magnitude sufficient to support a claim for damages to replace or restore each natural resource:

1. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that surface waters within the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted in degradation of water quality.
2. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that groundwater in the Oklahoma portion of the Illinois River Watershed has been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted degradation of water quality.
3. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that biota in the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient, metal and bacteria levels have affected community structure, decreased fish habitat and affected fish growth and health.
4. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that sediments/river/stream/lake bottoms in

the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Bacteria, nutrients and metals have contaminated the sediments in the Illinois River Watershed and increased nutrient concentrations have affected community structures.

5. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that land in the Oklahoma portion of the Illinois River Watershed has been injured in such magnitude sufficient to support a claim of damages. Bacteria and nutrients have contaminated the land in the Illinois River Watershed and increased nutrient concentrations have affected contiguous and surface water quality and subsurface groundwater quality.

c) It is impossible to distinguish between damage, injury and harm caused by the phosphorus, bacteria and other constituents in the waste of birds owned or controlled by Peterson Farms from that caused by waste owned and controlled by the other Defendants. The State has suffered, and continues to suffer, an indivisible harm caused by the improper waste disposal of all of the Defendants. In further response, the State incorporates its objections and response to Interrogatory No. 5 as if fully stated herein.

INTERROGATORY NO. 9: For each item of physical damage (injury or impairment) identified in your answer to Interrogatory No. 8, please fully describe the economic damages, whether compensatory money damages, restitutionary money damages, or costs of restoration or replacement, which you contend are (or were) directly caused by any act or omission of Peterson Farms. Your answer should include, but not be limited to, for each element of damages, describing the quantification of the damages, the method of calculating the damages, as well as

identifying your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 9: The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R Civ P. 26(b)(4)(A) and (B).

Subject to and without waiving its general objections or these specific objections, the State is unable to provide the nature and amount of damages the State is seeking to recover until expert characterization of the injury is completed. The State continues to develop its damage model and will provide the Defendants with this information pursuant to the Court's Scheduling Order (Dkt. #1075).

The State will be using established methodologies to arrive at its natural damages estimate. Which methodology or methodologies it will ultimately decide to use fall within the attorney work product doctrine. The State will disclose this information pursuant to the Court's Scheduling Order when the State provides its expert damages report(s). The State reserves the right to supplement this Interrogatory as responsive information is identified, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. # 1075).

INTERROGATORY NO. 10: Do you agree that from time to time, non-poultry growers acquire poultry litter and land apply such poultry litter within the IRW?

RESPONSE TO INTERROGATORY NO. 10: The State objects to this Interrogatory on the basis that it is vague and ambiguous as to the amount of poultry waste spread in the IRW by non-poultry growers, as well as the frequency at which it occurs. Subject to and without waiving its

general objections or these specific objections, the State responds that some amount of waste generated by at least one of the Defendants and entities for which at least one of the Defendants are legally responsible has been given to non-poultry growers who have then spread it on their land or the land of others in the IRW.

INTERROGATORY NO. 11: For each year from 1980 to the present, identify the quantity of poultry litter land applied in the IRW, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 11: The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

The State has requested this information from all Defendants and all have declined to provide the information to the State. Subject to and without waiving its general objections or these specific objections, at present the State does not know the precise quantity of poultry waste that has been generated by the poultry industry and has been applied in the Illinois River Watershed for each year from 1980 to the present. However, upon information and belief, the general quantity of poultry waste generated by the poultry waste is substantial and has caused injury and damages to the State. Pursuant to Fed.R.Civ.P. 33(d), the following are examples of documents that refer to the amount of litter generated in the Illinois River Watershed during certain time periods:

remediation costs is not exhaustive and the State reserves the right to supplement as the State continues to review its records and to incur response costs.

1. Illinois River Watershed Implementation Program (1996)
2. Illinois River: Monitoring Small Watersheds to Assess WQ (1992)
3. Illinois River and Baron Fork Watershed Implementation Program (1999)
4. Tenkiller Clean Lakes Study
5. Periphyton/biological monitoring
6. Costs incurred for the monitoring, assessment and evaluation of the release or threat of release of hazardous substances from Defendants activities in the Illinois River Watershed.
7. State share of cost sharing measures to implement management practices to limit phosphorus pollution and migration within the IRW.
8. Costs incurred evaluating, assessing and/or implementing any removal or remedial action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release.

INTERROGATORY NO. 20:

If you contend that any poultry grower under contract (at any time) with Peterson Farms in the IRW has ever violated the provisions of his/hers/its Animal Waste Management Plan, Nutrient Management Plan, Comprehensive Nutrient Management Plan or equivalent, please fully describe such violation. Your answer should include, but not be limited to, for each such violation, describing the name and location of the poultry grower, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 20: The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State further objects to this Interrogatory in that it is not limited by time frame. The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Without waiving its objections, the State is not required to rely for proof of its case on evidence directly documenting each individual violation of the Animal Waste Management Plan, Nutrient Management Plan, Comprehensive Nutrient Management Plan by Peterson Farms or its contract growers. The State has already provided Defendants with sampling data produced pursuant to the Court's Order of January 5, 2007 (Dkt. #1016), and will continue to provide additional data as it is identified and developed. Additionally, the State will supplement its response with any additional specific, direct evidence it intends to rely on as it is identified and developed, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. # 1075). Further, the State reserves the right to supplement this response when the State receives the information it has requested from Peterson Defendants and completes its investigation.

The State intends to demonstrate violations of animal waste management plans, nutrient management plans or comprehensive nutrient management plans through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants' waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the State's document productions and will continue these productions on a rolling basis. The State has produced grower files on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846 which may contain animal waste plan information which demonstrates violation of such plans. The State will also produce these records at the upcoming document production at the Oklahoma Department of Agriculture, Food, and Forestry.

INTERROGATORY NO. 21: Please fully describe each violation of the Oklahoma Registered Poultry Feeding Operations Act, and the regulations enacted pursuant thereto by Peterson Farms or any poultry grower with whom it is or has contracted for the raising of poultry within the IRW. Your answer should include, but not be limited to, for each such violation, describing the name and location of the violator, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 21: The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response. The State further objects to this Interrogatory in that it is not limited by time frame.

The State is not required to rely for evidence of its case on evidence directly documenting each individual statutory violation, release or application of waste and tracing it from the bird to the injured resource. The State has already provided Defendants with sampling data produced pursuant to the Court's Order of January 5, 2007 (Dkt. #1016), and will continue to provide additional data as it is identified and developed. Additionally, the State will supplement its

response with any additional specific, direct evidence it intends to rely on as it is identified and developed, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. #1075). Further, the State reserves the right to supplement this response when the State receives the information it has requested from Peterson Defendants and completes its investigation.

Without waiving its objections, the State intends to demonstrate violations of the Oklahoma Registered Poultry Feeding Operations Act through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the State's document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Order Scheduling Order (Dkt. #1075).

The State has produced grower files on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846 which may contain violation information. Further the State will reproduce these files at the upcoming Oklahoma Department of Agriculture, Food, and Forestry document production.

INTERROGATORY NO. 22: Please fully describe each violation of the Oklahoma Concentrated Animal Feeding Operations Act, and the regulations enacted pursuant thereto by Peterson Farms or any poultry grower with whom it is or has contracted for the raising of poultry within the IRW. Your answer should include, but not be limited to, for each such violation, describing the name and location of the violator, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

RESPONSE TO INTERROGATORY NO. 22: The State is not making a claim of violation of the CAFO Act against Peterson Farms.

INTERROGATORY NO. 23: For each year from 1980 to the present, please identify the quantity of fertilizer (whether commercial or organic), other than poultry litter, that was land applied within the IRW, and identify your evidence, whether testimonial or documentary, which you contend supports your answer.

INTERROGATORY NO. 24: Please fully describe the status of Oklahoma's promulgation of Total Maximum Daily Loads for any water body or water course within the IRW, including an explanation as to why Oklahoma has not promulgated such TMDLs.

RESPONSE TO INTERROGATORY NO. 24: The State objects to this Interrogatory to the extent it asks the State to "fully" describe the status. The State is currently working on a Nutrient TMDL for the Illinois River, Barron Fork Creek and Lake Tenkiller. The State has not yet promulgated a nutrient TMDL because of technical issues. Those technical issues include calibrating models, integration of additional data, and interoperability of modeling tools. The State will supplement this response as additional information is identified.

INTERROGATORY NO. 25: If you contend that Peterson Farms' liability derives, to any degree, from the formulation of its poultry feeds, please describe the specific formulation, including the constituent elements thereof, which you contend is proper.

RESPONSE TO INTERROGATORY NO. 25: The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

The State further objects to this Interrogatory in that it requests information the disclosure of which would be a violation of the Court's Confidentiality Order. The State has no contention as to the proper feed formulation to be used by Peterson Farms.

VERIFICATION


[illegible]

I, Miles Tolbert, being of legal age, hereby depose and state that I have read the foregoing responses to these interrogatories and that they are true and correct, to the best of my knowledge and belief, and that I furnish such responses based on consultation with the representatives of the State of Oklahoma.



Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 1st day of ^{June}~~April~~ 2007


Notary Public

My Commission Expires: 11/09/10
My Commission Number: 02017963